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AZ CORP COMMISSION
DOCKET CONTROL**ORIGINAL****BEFORE THE ARIZONA CORPORATION COMMISSION****BOB STUMP
CHAIRMAN****GARY PIERCE
COMMISSIONER****BRENDA BURNS
COMMISSIONER****BOB BURNS
COMMISSIONER****SUSAN BITTER-SMITH
COMMISSIONER**

**IN THE MATTER OF THE
COMMISSION'S INQUIRY INTO
POTENTIAL IMPACTS TO THE
CURRENT UTILITY MODEL
RESULTING FROM INNOVATION
AND TECHNOLOGICAL
DEVELOPMENTS IN GENERATION
AND DELIVERY OF ENERGY.**

DOCKET NO. E-00000J-13-0375**COMMENTS OF THE ALLIANCE
FOR SOLAR CHOICE**

**COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE
ON PROPOSED SCOPE AND APPROACH**

This Arizona Corporation Commission ("ACC" or "Commission") established this docket to review major innovations and technological areas that have the greatest potential to impact the current energy utility model. On December 5, 2013, Commissioner Bob Burns submitted a letter to the docket ("Commissioner's Letter") that identifies six major innovation and technology areas that Commissioner Burns proposes to focus on in this docket. The Commissioner's Letter also proposes a tentative workshop series for discussing the impact of these six areas on the current energy utility model and requests comments on the proposed scope

Arizona Corporation Commission
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1 and approach for this proceeding. The Alliance for Solar Choice ("TASC") respectfully submits
2 these comments pursuant the Commissioner's Letter.¹

3 TASC's member companies represent the majority of the nation's rooftop solar market
4 and include SolarCity, Sungevity, Sunrun, Solar Universe, Verengo Solar, and REC Solar.
5 These companies are important stakeholders in Arizona's Renewable Energy Standard and net
6 metering programs and are responsible for thousands of residential, school, church, government
7 and commercial solar installations in Arizona. TASC's member companies have brought
8 hundreds of jobs and many tens of millions of dollars of investment to Arizona's cities and
9 towns. The outcome of the questions considered in this proceeding will impact the ability of
10 TASC's member companies to continue to provide solar services to Arizona's residential
11 customers.

12 The six areas of technology and innovation addressed in the Commissioner's Letter
13 reflect changes in consumers' behavior and preferences. These changes are similar to those that
14 have taken place since the beginnings of the electricity industry and, like the changes before
15 them, will impact the nature, amount and timing of consumers' need for regulated electric utility
16 service. Ensuring access to innovative energy products and services is in the public interest
17 because such access allows competitive pressure to modify utility investments to keep pace with
18 the changing world and reduces the risk of overinvestment relative to the consumers' need for
19 regulated utility service. TASC believes that if the Commission can ensure Arizona's electric
20 utilities will provide open access to essential facilities under their control, it would be
21 appropriate for the Commission to calculate either just and reasonable pricing based on the
22 marginal cost a technology represents, or a just and reasonable credit for the marginal benefit a
23 technology provides, when using essential facilities. Accordingly, the Commission should use
24 this proceeding to determine:

- 25 1) What access to the utility system is necessary to facilitate consumer adoption of the
26 six categories identified in the Commissioner's Letter?
27 2) How can just and reasonable rates be set to value the use of the utility system?

28

¹ TASC submitted a Motion to Intervene in the above-captioned docket on January 17, 2014.

1 3) How can consumer behavioral changes and changes in consumer preferences be
2 forecasted and incorporated into utility planning?

3 In conjunction with this suggested scope, TASC makes, in Section V below, a number of
4 revisions to the five bullet points in the Commissioner's Letter. In addition, TASC suggest the
5 Commission dedicate one full day to distributed supply and storage resources enabling customer
6 self-supply.

7 **I. TECHNOLOGICAL INNOVATION, ALONG WITH CHANGES IN CONSUMER**
8 **PREFERENCES AND BEHAVIOR, WILL ALTER THE NEED FOR**
9 **REGULATED ELECTRIC UTILITY SERVICE IN ARIZONA.**

10 The promotion and protection of the public interest, as that interest changes in response
11 to technological innovation and consumer preferences, should guide the Commission. Arizona
12 has regulated electric utility service to promote the public interest for most of its history as a
13 state.² The Commission was created as a bulwark to protect consumers from overreaching by
14 public service corporations.³ Arizona courts have held that the Commission cannot discharge its
15 constitutional responsibilities solely by considering the profits of the corporation, but rather the
16 Commission must also take into account the effect of its determinations upon persons to whom
17 services are rendered.⁴ The consideration of technological innovations, and changes in consumer
18 behavior and preferences because of those innovations, fulfills the protective role the
19 constitutional framers envisioned in creating the Commission and clothing it with exclusive
20 power to determine rates and classifications.⁵

21 Reshaping the services that electric utilities provide to accommodate changes in
22 consumers' needs, behaviors and preferences is an essential concept that has guided regulation
23 since the beginning of the industry. During the early days of the electric power industry, most
24 large customers generated their own power, and utilities competed with each other via over-

26 ² See ARIZ. CONST. art. XV §3 (2013) (the constitution was ratified on December 9, 1910).

27 ³ See Scott Engelby, Deborah, *The Corporation Commission: Preserving Its Independence*, *Arizona State*
28 *Law Journal*, Ariz. St. L.J. 20:241, pp. 242.243 (1988).

⁴ *Phelps Dodge Corp. v. Arizona Electric Power Coop., Inc.*, 207 Ariz. 95, 107 (2004).

⁵ See *id.* at 107.

lapping and non-exclusive utility franchises.⁶ As demand grew, the public called for more efficient and effective regulation, resulting in the creation of a regulatory consensus allowing for industry consolidation, vertical integration and local monopolization in exchange for state oversight.⁷ As Americans' interest in products powered by electricity soared in the 20th century, electric utility service responded in turn, utilizing technological improvements, such as the development of long AC conductors and large central-station turbine generators, to capitalize on economies of scale and keep electricity prices low despite huge growth in electricity demand.⁸ Utility service evolved again when Congress passed the Public Utility Regulatory Policies Act of 1978, creating incentives for commercial and industrial customers to install combined heat and power facilities in an effort to reduce emissions and relieve congestion on transmission lines.⁹ History clearly shows how the evolution of the public interest has shaped the role of electric utility service.

The Commissioner's Letter recognizes the need for regulated electric utility service to continue to evolve in Arizona. Commissioner Burns identifies six categories of technological innovation that may impact the current utility model for providing electric service:

- Distributed supply and storage resources enabling customer self-supply;
- Customer load management technology, energy efficiency, major new loads and related services;
- Utility-scale storage technology;
- Metering technology and services;
- Transmission and distribution automation; and

⁶ Jarrell, Greg A., "The Demand for Electric Utility Regulation" in *Electric Power: Deregulation and the Public Interest*, John C. Moorehouse (editor), Pacific Institute for Public Policy, p. 292 (1986).

⁷ Hirsh, Robert F., *Power Loss – The Origins of Deregulation and Restructuring in the American Electric Utility System*, at 18-31 (1999).

⁸ Hausman, William J., Neufeld, John L., "The Structure and Profitability of the U.S. Electric Industry at the Turn of the Century", p. 226 (1990); Hausman, William J., Neufeld, John L., "Time-of-day pricing in the U.S. Electric Power Industry at the Turn of the Century." *The Rand Journal of Economics*, 15 (Spring 1984): 116-26, p. 118; Hirsh, Robert F., *Power Loss – The Origins of Deregulation and Restructuring in the American Electric Utility System*, at 50-51, 55 (1999).

⁹ Hirsh, Robert F., *Power Loss – The Origins of Deregulation and Restructuring in the American Electric Utility System*, at 6, 60-61, 68 and 69 (1999); 16 U.S.C. § 2601-2645 (2006); see also *Kamine/Besicorp Allegany L.P. v. Rochester Gas & Elec. Corp.*, 908 F. Supp. 1194, 1204 (W.D.N.Y. 1995) ("PURPA was created as a vehicle to reduce the nation's dependency on foreign oil and to conserve energy.").

- Micro-grids.

The Commission's foresight in investigating the impact of these areas is commendable. These innovations and technologies will provide today's consumers with greater awareness of their energy use and more control over their energy choices. The six areas of innovation and technology in the Commissioner's Letter will impact the nature, amount and timing of consumers' need for electric utility service in much the same way as, for example, the demand for electric appliances and the development of AC conductors did during the past 100 years.

Changes in consumer behaviors and preferences, and their impacts on the need for utility service, can be forecasted and included in utility planning. While advances in technology may occur suddenly, such as the recent precipitous drop in the costs of energy storage,¹⁰ the diffusion of technology into the marketplace takes time, as demonstrated by the decade or so it has taken for distributed solar to make up only a small percentage of Arizona Public Service Company's energy supply.¹¹ Thus, while technology can change quickly, the slow rate of adoption of new technologies allows the Commission to forecast the changes in utility service that the deployment of these technologies will require. Arizona's electric utilities will need to adapt to these changes, and this proceeding provides the ACC an opportunity to guide the utilities' adaptation so that the public interest is maximized.

II. THE PUBLIC INTEREST REQUIRES THAT REGULATED ELECTRIC UTILITIES FACILITATE CONSUMER ACCESS TO NEW ENERGY PRODUCTS AND SERVICE.

Since utilities are regulated to promote the public interest, the Commission's regulations should ensure the public interest is maximized. Limiting the opportunity for anti-competitive practices, and ensuring consumer access to new energy products and services, will assist the Commission in achieving that goal. A subset of regulated utility service is a natural monopoly,

¹⁰ See, e.g., Wald, Matthew, *From Harvard, a Cheaper Storage Battery*, The New York Times (Jan. 8, 2014) (available at: http://www.nytimes.com/2014/01/09/business/energy-environment/from-harvard-a-cheaper-storage-battery.html?_r=1).

¹¹ Interstate Renewable Energy Council, Inc., *U.S. Solar Market Trends*, p. 4, fig. 1 (August 2012) (demonstrating the small amount of solar capacity that existed in the U.S. at the beginning of the century.); Arizona Public Service Company, *2013-2017 APS Renewable Energy Standard Implementation Plan*, Exhibit 1A (June 29, 2012) (estimated from projected 2013 output of 1,111,847 MWh from distributed energy resources).

1 where a single company can provide service more cost effectively than multiple providers and
2 avoid unnecessary duplication of essential facilities.¹² The electric distribution system is an
3 example of essential facilities where the provision of service is best suited for a single provider,
4 at least with current technology. At the same time, the public interest is also advanced by
5 introducing competition, where possible, in order to create new markets for energy products and
6 services and promote innovation, efficiency and cost reductions that ultimately benefit
7 consumers.¹³ Thus, the public interest is maximized when regulation confines the reach of a
8 utility's monopoly power to providing customers with essential services while allowing
9 consumer access to innovative products and services.

10 Combining a utility's control over essential facilities with a utility's monopoly on retail
11 sales can work against the public interest. A utility's control over the distribution system, for
12 example, provides the utility with a means to limit alternatives that may impact utility sales in
13 retail markets. Since the Commission's efforts to implement retail competition in Arizona have
14 been unsuccessful, the State's utilities both control the distribution system and have a monopoly
15 on retail sales, meaning the competitive options for consumers to obtain electricity have been
16 limited. These limitations are problematic over time. If the Commission shields utilities from
17 competitive pressure by limiting consumer alternatives, there will be no pressure to modify
18 investments to keep pace with the changing world. Such a scenario risks overinvestment relative
19 to the consumers' need for the regulated entity. These overinvestment risks are borne by
20 ratepayers, exposing them to the risks that would otherwise be borne by shareholders in a
21 competitive market.

22 The ACC should maintain consumer access to competitive alternatives that consumers
23 have available and ensure utilities do not prevent the development of competitive markets that
24 could arise to compete with traditional utility service. Utilities should not be allowed monopoly
25 status, and the accompanying control of essential facilities, to undermine markets that would
26 provide consumers alternatives simply because those alternatives may impact utility shareholder

27 ¹² See *Natural Gas Serv. v. Serv-Yu Cooperative*, 70 Ariz. 235, 237-238 (1950) (listing factors for
28 determining when a company is a public service corporation).

¹³ For example, the Commission's net metering provisions helped spur a new market for onsite solar service
providers that has allowed TASC's members to invest tens of millions of dollars in Arizona.

1 profits. To that end, the Commission should use this proceeding to ensure consumer access to
2 new energy products and services and, as discussed below, to provide utilities direction for
3 calculating just and reasonable pricing for the use of essential facilities.

4 **III. THE ACC SHOULD ENSURE ARIZONA'S ELECTRIC UTILITIES PROVIDE**
5 **ACCESS TO ESSENTIAL FACILITIES UNDER THEIR CONTROL TO**
6 **ENSURE CONSUMER ACCESS TO NEW PRODUCTS AND SERVICES.**

7 An electric utility controls essential facilities that can significantly limit consumer access
8 to products and services by non-monopoly service providers. The Commission should prevent
9 Arizona's utilities from leveraging monopoly status in *regulated* markets to thwart the
10 development of *new* markets.

11 Arizona's monopoly electric service providers operate in the generation, transmission,
12 distribution and retail sale business, which provides them a financial motivation to limit
13 competition in all of these markets. Allowing the utility to leverage control of essential facilities
14 to limit the development of competitive markets harms consumers, prevents development of new
15 markets and new economic activity, limits or forecloses consumer access to desired products and
16 services, inhibits innovation in consumer goods and services, and removes incentives to pursue
17 efficiencies that lower consumer cost. The ACC should ensure reasonable access to the utility's
18 essential facilities to 1) ensure consumer access to products and services, and 2) promote
19 competition in markets where there is no natural monopoly.

20 **IV. THE ACC SHOULD DEVELOP JUST AND REASONABLE PRICING FOR THE**
21 **USE OF ESSENTIAL FACILITIES.**

22 In addition to ensuring every electricity supplier and self-generator has access to electric
23 distribution service, as discussed above, the ACC should establish rates and terms and conditions
24 of service that are just and reasonable. Arizona law requires this result:

25 Every public service corporation shall allow every electricity
26 supplier and self-generator of electricity access to electric
27 transmission service and electric distribution service under rates
28 and terms and conditions of service that are just and reasonable as

1 determined and approved by regulatory agencies that have
2 jurisdiction over electric transmission and electric distribution
3 service.¹⁴
4

5 While the Federal Energy Regulatory Commission regulates access to transmission service, the
6 ACC regulates access to the distribution system. If the ACC can ensure Arizona's electric
7 utilities will provide open access to essential facilities under their control, TASC believes it
8 would be appropriate for the Commission to calculate either just and reasonable pricing based on
9 the marginal cost a technology represents, or a just and reasonable credit for the marginal benefit
10 a technology provides, when using essential facilities. TASC appreciates that the Commission is
11 restricted in its ability to approve rates outside of a utility general rate case ("GRC"), but the
12 Commission can use this proceeding to provide direction to utilities on how rates should be
13 developed in future GRCs.

14 **V. CONCLUSION AND PROPOSED CHANGES TO SCOPE AND APPROACH**

15 For the foregoing reasons, the ACC should use this docket to determine: 1) what access
16 to the utility system is necessary to facilitate consumer adoption of the six categories identified
17 in the Commissioner's Letter; 2) how just and reasonable rates may be set to value the use of the
18 utility system; and 3) how consumer behavioral changes and changes in consumer preferences
19 can and should be forecast and incorporated into utility planning. Accordingly, TASC suggests
20 the following revisions to the five bullet points in the Commissioner's Letter:

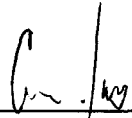
- 21 • Customer classes potentially impacted, ~~and~~ when in the future, if not already, the
22 technology or innovation may become competitive, and how the impacts of the
23 technology or innovation on a customer class should be forecasted and included in
24 utility planning.
25
26
27
28

¹⁴ A.R.S. § 40-332 (2013).

- 1 • What access to traditional utility systems (generation, transmission, distribution, and
2 customer systems) is needed to facilitate consumer adoption of the technology or
3 innovation and what will be the impact of that access on use, safety, reliability,
4 power quality, physical & cyber security, and customer support requirements to
5 traditional utility systems (generation, transmission, distribution, and customer
6 systems)
- 7
- 8 • How the costs and benefits of the technology or innovation may be calculated and
9 included in just and reasonable rates set to value the use of the utility system.
- 10
- 11 • ~~Business and regulatory impacts such as the need for~~ How technologies such as smart
12 grid to realize will affect the benefits, changes in market structures, system operations
13 and planning, rate designs, and regulatory policies resulting from or needed to
14 facilitate the consumers' adoption of the technology or innovation
- 15
- 16 • Impact on other regulated industries such as natural gas, water, telecommunications
17 or cable
- 18

19 TASC looks forward to discussing these issues with the Commission and stakeholders at
20 workshops and through comments in this proceeding. To that end, TASC believes the
21 Commission should dedicate one full day to distributed supply and storage resources enabling
22 customer self-supply.

23
24 RESPECTFULLY SUBMITTED this 17th day of January, 2014.

25
26 
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2 this 17th day of January, 2014 with:

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